Virginia Law Register

VOL. X.] MAY, 1904. [No. 1.

THE VIRGINIA STATE CORPORATION COMMISSION.

This novel institution, as a Railroad Commission, is without a counterpart as an instrument for the practical execution of those governmental powers, for the regulation and control of public service corporations, which courts have long since decided to exist, but which governments have never before been able to efficiently administer.

That railroads are public highways, established, like turnpikes, primarily for the benefit of the public and incidentally for the profit of their stockholders; that the establishment and maintenance of highways is a function of the state; that, in establishing and operating railroads, the railroad companies perform functions of the state, and are therefore subject to the supervision, regulation and control of the state; that, in addition to this, the business of a railroad company is affected with a public interest, and is, for that reason also, subject to regulation and control by the state, irrespective of the fact that such business is a function of the state itself—these are propositions which may be regarded as fully settled law.

On the other hand, that the ownership of railroads is private property, and, as such, entitled, both legally and morally, to protection from confiscation, either as to its corpus, or as to its earnings resulting from the performance, for reasonable charges, of the public duties to which it has been dedicated; that therefore the state's rightful power to prescribe duties, fix charges and make regulations for railroad companies, is limted to the bounds of reasonableness and justness—*these* are propositions equally well established by the courts.

A sound and wise public policy would doubtless go still further,

and, bearing in mind that the governmental function of establishing and operating highways—at least, as to that species known as railroads—can doubtless be better executed vicariously, through the agency of railroad companies, than directly by the state itself, it might well be thought best, for the good of the country, that, in regulating and controlling railroads, the state should encourage their growth and improvement by permitting their owners to make as much profit out of them as is possible, consistent with the impartial and efficient service of the public at reasonable rates; and that, instead of imitating the example of those railroads, whose measure of charges to the public is "the utmost that the traffic will bear," the state should, in a spirit of equity and liberal public policy, not impose upon the railroads rates and regulations "the utmost that they can bear," but only such as are necessary to secure to the public reasonably efficient public service, facilities and conveniences, impartially rendered and at reasonable rates.

A railroad is naturally and necessarily a monopoly. Practically, no two roads can exist along the same line; therefore the location of one road keeps out every other road from the same territory. For this reason it follows that, if a railroad fails in furnishing to its patrons any service, facility or convenience usually furnished by railroads, and which some other railroad company, occupying the same location, might have furnished them, then, to that extent, it is acting the part of the dog in the manger—not giving the service itself, and, by its presence, keeping out any other road that might give it. To this extent, such a company would be abusing its powers as an agency of the state, and perverting its use of the governmental power of eminent domain (by which alone it can either establish or operate its road) from the service of the public, to their injury and oppression. It is not only the right, but the highest duty, of the state, to see that its agents are guilty of no such misuse of the powers with which they are entrusted, primarily for the good of the public.

Even though all proper services are rendered by a railroad company, still it may immeasurably abuse its powers and oppress the public, by making unreasonable charges for its service. Against such abuse, the individual is equally as helpless as in the case last mentioned, for the transportation charges which he pays are no more the subject of private contract in which he can protect him-

self, than are his taxes. In fact, railroad charges are somewhat in the nature of public dues, exacted from the individual in proportion to the use he makes of the public highway (the railroad), established and operated by an agency of that government which he is obliged to support with his property and defend with his life. This government owes it to him, therefore, affirmatively to see that these dues are not made extortionate or oppressive.

Finally, a railroad may, in general, furnish all reasonable services and facilities, and may make reasonable charges therefor, and yet the public may be ruinously oppressed by such road's making unjust discriminations in such service, facilities or charges, whereby the powers which were given it by the state for the impartial service of all the people, are used by it for the undoing of some and the inordinate upbuilding of others. This abuse does not consist merely in refusing reasonable facilities or in making unreasonable charges, but is practised just as frequently and just as injuriously by giving better facilities and better rates to a favored patron or community than to others similarly situated: for, as was said by the Supreme Court of the United States, a charge, though reasonable in itself, is nevertheless extortionate, if other persons similarly situated are charged less—and the same might be said of any service, facility or convenience, which, though reasonable in itself, would be unreasonably insufficient if other persons similarly situated should be furnished with better.

These, then, are the three great particulars in which the people are in danger of oppression from the railroad companies, and in which it is not only the right, but the bounden duty, of the government to protect its citizens by adequate and effective supervision, regulation and control of railroads and their operation, to-wit: Adequacy of service, Reasonableness of charges, and Impartiality in both services and charges.

To accomplish great good requires great power, which, however, necessarily embraces equal potentiality for evil; and thus it generally happens that, just in proportion as a thing becomes beneficial, it also becomes dangerous. The private control of turnpikes is less dangerous to the country than that of railroads, merely because railroads are more beneficial to the country than are turnpikes. The greatest human agency yet devised for the advancement of civilization, the creation of prosperity, the spread of enlighten-

ment and the upbuilding of national strength, is the railroad; and, in the very power of railroads to accomplish these results, lies the danger to the country from their unrestricted control, by private persons. No military occupation could more effectively dominate a country than the unfettered control of its transportation facilities. In proportion as the railroads have contributed to the business prosperity of a community, in the same proportion is such prosperity dependent upon the railroads; and, in proportion as the business of a community is dependent upon the railroads, in the same proportion is such business at the mercy of the railroads, unless protected by the state.

Thus, if we cripple our railroads, we impair our prosperity; but, if we fail to regulate and control our railroads, they will devour the very prosperity which they have helped to create. Like fire and water, railroads are invaluable servants, but destructive masters.

Three theories, only, have ever been advanced for the protection of the public from railroad abuse: first, Competition among the railroads; second, Government Ownership; and third, Government Regulation and Control.

Of these, the first has proven utterly delusive. Even if every railroad in the country were owned and operated by an independent company, still, competition would be an entirely inadequate protection to the public. The great majority of people and of communities have, and ever will have, but one railroad, and therefore not only could never have the benefit of competition, but would always be forced by the railroads to bear the burden of all losses sustained by the roads at the few points where there may possibly be competition. Furthermore: competition, as a protection to the public, must act automatically, and at best its operation can only affect general results—it can never afford protection against individual instances of oppression.

The natural and inevitable tendency of human instincts, as developed in trade and commerce, is to destroy competition and to create monopoly. This is no more true now than it has been from the beginning. Before the days of steam and electricity, the physical difficulties obstructing co-operation on a large scale made large monopolies practically impossible. In modern times, however, these physical obstacles have been entirely surmounted,

and two men situated on opposite sides of the globe can to-day co-operate almost as readily as if they lived in the same village. The inevitable consequence of this is, that the natural tendency of all trade and commerce toward monopoly is given a free hand, with the inevitable result of the tremendous "trusts" and monopolies with which the public has to deal to-day. Thus it transpires that even such competition as ever did, or ever could, exist among railroads has already practically disappeared. Consolidation seems to be the natural, if not inevitable, consequence of improved facilities for manufacture and intercommunication. In other words, it is apparently an unavoidable concomitant of that material progress which has so distinguished the modern, from all former, times.

As a general thing, it is the part of wise statesmanship to guide and control, rather than to obstruct or turn back, the car of progress; for, with all of its evils, modern consolidation, even in the transportation business, is not without its accompanying good. In such a matter as transportation rates (which enters into every calling and forms the basis of all business calculations and operations), stability and uniformity are of the first importance. These could never have been achieved under the mere operation of competition, no matter how free or how great. The wonderful improvements in the transportation system of this country could never have been accomplished under independent ownership and operation of every little line of road as it was originally constructed; and, after all, it may be a question for thoughtful men to ponder, whether we have not, in railroad consolidation as it now exists, gained as much in efficiency of service as we have lost in the fanciful protection of competition.

However, the business consolidations of modern times, particularly among railroads, have created an entirely new condition of affairs, which requires new governmental agencies to deal with. It is undoubtedly wise, by obstructive measures, to prevent, as far as possible, great business consolidations increasing more rapidly than governmental machinery is perfected for their proper and efficient regulation and control; but, to depend upon such competition, as can be maintained by artificial means, as the ultimate, or approximately sufficient, security of the people against abuses by "trusts and monopolies" is the veriest delusion.

Monopolies of all kinds undoubtedly have great power for good; but they have equally great power for evil. Therefore, in proportion to their strength, increases, not only the danger from them, but also the difficulty of controlling them. As the monopoly grows great and strong, every contest between it and the individual citizen becomes more and more unequal, until it practically ceases to be a contest at all—the individual being practically at the mercy of the monopoly. It is for this reason that, from time immemorial, those businesses which have always been monopolies, such as ferries, mills, common carriers, etc., have been regulated and controlled by the state, it having always been recognized that the state alone was capable of adequately dealing with them.

If such was true of those petty monopolies of former days, much more is it true of the gigantic monopolies of modern times, to say nothing of the fact that, in railroad matters, these monopolies are actual agencies of the state itself, dependent for their existence upon governmental powers, which they have been authorized to exercise for the public good. As to these railroad companies, which are both agencies of the state and natural monopolies, it is worse than idle for the state merely to proclaim general laws for their control, leaving the individual to invoke and enforce those laws for his own protection in the ordinary courts of law. The contest is too unequal: it is but the hopeless struggle of a pigmy with a giant. The state, therefore, which has armed and equipped these great companies with the powers which they exercise, and entrusted them with the performance of a part of the state's own duty to her citizens, owes it as a simple act of justice, as her bounden duty, to (herself, and of her own motion) exercise a supervision and control over these agencies of hers, and to, herself, administer the laws which she may make for regulating the performance by them of their public duties. Clearly, the State is morally responsible to its citizens for any abuse of those powers with which *it* has clothed the railroad companies, especially as the State itself was intrusted by the people with those same powers only for the benefit and protection of all its citizens without distinction.

When a mob of men commits a riot, the state does not sit idly by, depending upon each individual citizen to bring his private action against the rioters for assault and battery or other trespass; but, of her own motion, interposes her own strong arm to vindicate

and enforce her laws against breaches of the peace. Thus, when a transportation company violates the laws made for the regulation and control of its public duties, the state should not depend upon individuals asserting their private causes of action for a public wrong—because, all service by a railroad to its patrons being a public service, every breach of that service is, in a sense, a public wrong—but should interpose, of her own motion and with her own administrative machinery, to vindicate her own laws and to punish the dereliction of her own agent.

Competition, then, as a protection to the public against railroad domination and oppression, being a mere delusion, having never been efficient and having now practically ceased to exist, the question of providing such protection has norrowed itself down to two possible methods—State Ownership, and State Regulation and Control—the former is advocated by those of socialistic tendencies, the latter by the conservatives. That one or the other of these remedies is inevitable, would seem to be manifest, because no free people could exist without adequate protection of some sort against those who control their transportation facilities. The former method is being tested in Europe, the latter is undergoing its probation in America. Thus far our experiments, both in state and federal government, have been far from satisfactory. The result is that the advocates of state ownership, among whom are many able, thoughtful and patriotic men, have urged the more strongly their method of dealing with the situation as being the only one from which actual protection and relief can be expected.

On the other hand, the advocates of state regulation and control have believed that the unsatisfactory results of this method of dealing with the railroad problem—both as to state, and inter-state, traffic—do not proceed from any deficiency in the legitimate powers of government to adequately handle the situation; but are produced solely by the unsuitable machinery employed. The courts have fully established the theoretical possession by the state of the amplest powers for the regulation and control of railroads in such a manner as to afford the public the fullest relief and security, and, at the same time, give to the property interests represented by the railroad every reasonable and just protection.

The question then was, not the enlargement of the powers of government, nor the assertion for it of any new or strange function

of a paternal or socialistic character; but, on the contrary, without adding one jot or one tittle to the powers and functions which have long been conceded as properly belonging to government, the only thing needed was to provide suitable, workable and efficient machinery for the exercise of those conceded powers and the performance of those concededly legitimate functions. To the supplying of such machinery, the late Constitutional Convention of Virginia addressed itself, in the spirit of conservatism, with the hope that thereby the state might be saved from the tyranny of unrestricted railroad domination on the one hand and the corruption and incompetency of state ownership on the other.

State regulation and control must, of course, be effected by law. Laws must first be enacted by the legislature, then construed by the judiciary, and, finally, be enforced by the executive or administrative department. It is but natural, then, that the utter unfitness of the slow and cumbrous machinery of the general legislature for dealing with abuses in the operation of railroads was the first difficulty encountered in the attempt to effect state regulation and control. This difficulty first suggested the "railroad commission," as an instrumentality of government, and the most advanced of these commissions ultimately supplied this difficulty in the *legislative* machinery of government. In the meantime, however, it had developed that the ordinary *judicial* machinery was as utterly insufficient to meet the requirements of railroad regulation and control, as the ordinary *legislative* machinery had been found to be. The new Corporation Commission of Virginia is the first attempt to provide new *judicial,* just as the former commissions had provided new *legislative,* machinery, specially designed for executing the function of state regulation and control of railroads. As above stated, none of these commissions involve the granting or assertion of any new or strange powers of government, but merely the establishment of new and more suitable machinery for the efficient exercise of governmental powers already existing.

The regular general legislature of a state, usually containing a membership of several hundred, whose personnel is evanescent, meeting only once in one or two years, sitting in two chambers, remaining in session but a few weeks, moving slowly and with difficulty as must all large and cumbrous bodies, and having the entire legislative and fiscal business of the state to attend to, is necessarily

unable to acquaint itself with the technical details of railroad transportation and keep up with its constantly changing conditions, to prescribe rates of charges in their infinite variety, or to provide remedies for the multitudinous classes of railroad abuses—and this would be true, though every member of the general legislative body were a Solomon redivivus.

When these general legislative bodies began to address themselves in earnest to the regulation and control of railroads, the first need they experienced was full, accurate and technical information of the facts and conditions to be dealt with. This led to the creation of the "advisory commission," whose functions were to overlook and inspect the working of railroads, to hear complaints, to search out defects in the system, to report abuses, and to recommend remedies therefor; but no power was given such commissions to afford any relief. The first Massachusetts commission is generaly taken as a type of this kind of commission; and upon this plan was designed the Inter-state Commerce Commission, and the commissions of several states, including the former Railroad Commission of Virginia.

These "advisory commissions" served a very useful purpose in collecting statistics, giving publicity to wrongs, and in directing systematic, earnest and careful study of the railroad problem; but, though many wise and salutary regulations and requirements were enacted as results of the facts made known, and the recommendations suggested, by these "advisory commissions," yet, as an actual protection of the people from railroad oppression, these commissions were utterly impotent.

However, the "advisory commission" was at least a step in the right direction, and served to bring the public up to the next difficulty to be overcome in the path of state regulation. It was realized that the general legislature, by reason of its ponderous machinery, its slowness of action, and the readiness with which such action could be delayed or defeated, was utterly incapable of adequately dealing with the evils brought to light, or of supplying the remedies suggested, by the "advisory commission." The vast superiority of the railroad managers over the general legislature in mobility and quickness of action, enabled them to design and execute plans to evade the law, faster than the legislature could establish new laws to defeat their new plans. The contest between the

legislature and these railroad managers was not unlike an elephant charging a pack of terriers, or the proverbial attempt of the Irishman to catch the flea.

To overcome this difficulty, the "*Administrative* Commission" was designed. This was the old "Advisory Commission," clothed with the additional powers to prescribe charges and regulations for railroads, to require them to establish and maintain reasonable and just service, facilities and conveniences, and to resort to the courts to enforce its orders. The railroad commissions of Iowa, Georgia and North Carolina, are fair samples of the most efficient and successful commissions of this class, which were vast improvements upon the old "advisory commissions," and accomplished a great amount of good; but still the demands of the situation were far from being satisfied.

The defects in the old *legislative* machinery had been thus supplied, in the "administrative commission," by the creation of a small, uni-cameral, special legislature, composed of expert men, in constant session, authorized to legislate only on the regulation of railroads, and, by reason of its simple and specially designed machinery, capable of as prompt action as are the railroad managers themselves, and able to make new laws as fast as those managers could devise new shifts. But the inability of the old *judicial* machinery to meet the demands of railroad regulation, became more manifest than ever; and *this* defect remained wholly unremedied. Such was the status of the Railroad Commission problem, when the late Virginia Convention addressed itself to the subject.

The prescribing of charges or regulations for railroad companies, is a *legislative* function, irrespective of whether it be done by the general legislature, a railroad commission, or any other agency of the state. The right to exercise this function is limited by the bounds of reasonableness. Should the charge or regulation prescribed be unreasonable, it is unconstitutional and void. As to whether it be, in fact, unreasonable, is a *judicial* question. The right of protection against unreasonable (and therefore, unconstitutional), regulations, is one of which no person may be deprived, save by due process of law, the administration of which process is a *judicial* function, with which neither the general legislatures nor the "administrative commissions" were clothed. From this it resulted that, before any rate or regulation prescribed by a legisla-

ture or a commission could be enforced against an unwilling company, such rate or regulation had to undergo a test of its reasonableness in the ordinary courts, with all their proverbial slowness of procedure, delay of continuances, appeals, etc., so that it was often several years before the final decision was reached, by which time the conditions existing at the beginning (to which alone the rate or regulation was suited) might have entirely changed and the rate or regulation, established after so much trouble, labor and expense, be found either inapplicable or inefficient.

Even should the courts decide such questions with the greatest promptness, the railroads could still obstruct, and, to a great degree, defeat, the regulation, by withholding from the commission evidence sufficient to defeat some more or less material part of the regulation, and then producing such evidence, for the first time, before the court; when, if successful, the court was powerless to correct the error, however small, and could only send the whole regulation back to the commission for proceedings *de novo,* with possibly a like result and indefinite delay.

Let us suppose, however, that there was no question about the constitutionality of a regulation or rate prescribed by the commission, still the commission had no power to enforce such regulation or rate, because the question of its violation was a judicial question, which the commission, having no judicial powers, could not determine; the commission was obliged, therefore, in order to enforce its own regulations and requirements, to bring and prosecute suits in the various courts of the state, for alleged violations of them. This led to further delay, expense and inefficiency.

Often, the violations or disregard of the commission's regulations and rates would be so numerous as to make it impossible for any one commission to prosecute each offence in the various courts; and so they would go unpunished, unless prosecuted by individuals, who could rarely afford to do so.

These and other similar difficulties have defeated the efficiency of many railroad commissons clothed with the amplest legislative and executive powers. They constituted the chief obstacles which stood between the point to which the best commissions had been brought, and the ultimate goal of satisfactory state regulation. To the overcoming of these obstacles, and the completion of the last

stage in the evolution of state regulation of railroads, the Virginia Convention directed its efforts.

The enactment of every law implies necessarily the decision, by the enacting body, that such law is valid, and therefore the affirmative decision, by such body, of every question upon which such validity depends. But, while these questions are all judicial, the decision of them by ordinary legislative bodies is non-judicial, is not arrived at by due process of law, and is therefore not binding upon anyone. Thus the passage of a railroad regulation by the general legislature necessarily implies the decision by the legislature that such regulation is reasonable, because, upon its reasonableness, depends its constitutionality—its validity: but, though the question of its reasonableness is a judicial one, the implied *decision* of that question by the legislature is non-judicial, being arrived at without due process of law; such decision is therefore not binding upon any one, and can be collaterally attacked, as it were, in any court, in which class of tribunals alone can such questions receive a judicial decision—that is, a decision binding upon the parties. This is equally true of regulations passed by a railroad commission (other than the new Virginia Commission), which is only a petty legislature with special powers.

Now, in all matters pertaining to railroad regulation, promptness and vigor of action are absolutely essential—in such matters, the ordinary "law's delay" is utterly fatal. If, then, all questions affecting the validity of a charge or regulation prescribed by the commission, could be definitely and conclusively settled at the time such charge or regulation is prescribed, a vast improvement would be accomplished in the efficiency of the machinery for state regulation. Not only would there be saved the long time and expense of testing such validity by the ordinary proceedings through the courts, but, if there be any real defects in the proposed charge or regulation, the railroad would, at its peril, be obliged to point them out to the commission while the prescribing of such charge and regulation was under consideration, so as to have the defects therein corrected at the start, instead of holding back its evidence until the case comes up in court and then bringing it forward for the first time to overthrow a regulation which might have been corrected by the commission at its inception.

How, then, could the decision of the commission upon the valid-

ity of a regulation, and upon every point necessarily involved therein (which decision is necessarily implied in the very act of prescribing such regulation) be made binding upon the parties, so that it cannot be afterwards attacked in the courts—so that the validity of such regulation may not afterwards be questioned? This was the proposition.

The essential characteristic of a judicial decision, and upon which its conclusiveness depends, is that it is arrived at only by due process of law, which means that the party affected must be duly notified, must have a fair hearing as of right, must have process to compel the attendance of his witnesses, must be allowed the benefit of counsel, etc., etc. Now, in every enactment of a regulation by a legislature or a commission, all these privileges are, as a fact, allowed to persons as a matter of *grace;* if, then, it merely be provided that such privileges be allowed them as a matter of *right,* the requirement of due process of law would be met, and the implied decision of a regulation's validity would thereby become a judicial decision (although still implied rather than expressed), and thus be conclusive upon the parties. This could not be done as to general laws enacted by the regular legislature, because the parties to be affected would be too numerous and uncertain to be notified; but, as to railroad regulations, nothing would be simpler than for the commission to summon each railroad to be affected by a proposed regulation, and give to it a judicial hearing upon all questions involving the validity of such regulation, while its enactment is under consideration. If defects in such validity be thus brought to light, the regulation could be amended so as to cure such defects before it is finally enacted; but if such defects are not shown, or, being shown, are corrected, then the regulation could be enacted and thereafter its validity could not be questioned, because it would already have been inquired into by due process of law binding upon the parties and conclusively settled by the affirmative decision necessarily implied in its final enactment.

Aside from a few minor questions of regularity of proceedings, by far the chief question involved in the validity of a railroad regulation or rate, is its reasonableness; therefore, an inquiry into the validity of such rate or regulation, is practically limited to an inquiry into the judicial question of its reasonableness. In the

process of prescribing and enacting such rate or regulation, the questions of its wisdom, propriety, efficiency, etc., are *legislative* questions, which the commission is, of course, obliged to consider and decide. Now, the judical question of validity is so closely allied to, and interwoven with, the legislative questions of wisdom, propriety, efficiency, etc., that it is impossible to intelligently consider the one, without having an adequate view and comprehensive understanding of the others. Hence it follows, that this commission of three men, specially experienced in the consideration of such subjects, is, at the time of considering the legislative questions of wisdom, propriety, or efficiency of a regulation, peculiarly the appropriate tribunal to also consider and determine the cognate (though judicial) question of its reasonableness.

No express decision need be rendered upon either the legislative, or the judicial, questions involved; but the affirmative decision of them all, necessarily involved in, and *implied* by, the act of prescribing the regulation or fixing the rate, is sufficient.

These views, then, were adopted by the Virginia Convention, which provided that whenever the commission should undertake to prescribe any rate, regulation or requirement, it should first summon the railroad or railroads to be affected thereby to appear before the Commission upon a given day, and show cause, if any they could, why the rule or regulation in question should not be prescribed. Process is required to be afforded such railroad or railroads, for compelling the attendance of their witnesses; the right to be represented by counsel is given them; and every opportunity and protection is afforded them as a matter of right, to secure to them, not only substantial justice, but as full, complete and formal process of law as in any regular court of justice. In other words, the Commission, *before* finally prescribing any rate, regulation or requirement, is obliged to inquire into the question of its reasonableness and validity, by the same due process of law, against the railroads to be affected thereby, as such inquiry could be made by a regular court of law *after* such rule, regulation or requirement had been finally enacted. The affirmative decision of the Commission upon such questions of reasonableness and validity, which is necessarily implied in the final enactment of the regulation, is then made conclusively binding upon all the parties, and not open to collateral attack.

Due process of law does not necessarily involve the right of appeal; but, with a lively appreciation of the important property rights involved, the Virginia Convention, while providing for the Commission's making, conclusively, both a judicial and legislative decision in the one act, as above explained, was careful to provide for an appeal, as of right, to the Supreme Court of Appeals, from such implied judicial decision; but, upon such appeal, no new evidence is permitted to be introduced which was not before the Commission, nor is any other tribunal, except the Supreme Court of Appeals, upon appeal, permitted to question the validity of any rate or regulation prescribed by the Commission.

Heretofore, when a court would find a rate to be unreasonable, it would condemn the whole rate and send it back to the Commission to do its work all over again; by the time this could be done, the conditions to which the first rate was adapted, might have entirely changed, and so the whole proceeding be without practical result. It will be perceived, however, that, practically, no rate can be unreasonable *in toto,* and therefore it ought not to be condemned *in toto.* It is only to the extent that it is unreasonable, that it should be condemned; and it is almost impossible to ascertain that a rate is at all unreasonable, without at the same time ascertaining the *extent* to which it is unreasonable. There is no good reason, therefore, why the appellate court, upon condemning a rate as unreasonable, could not, at the same time, state in its order the extent to which it is unreasonable, and then and there make the necessary correction itself, without incurring the additional delay of sending it back to the commission to be prescribed anew. The Virginia Convention therefore provided, that when a rate fixed by the Commission should be found unreasonable by the Supreme Court upon appeal, that court should, in its order, make the correction necessary to bring such rate within the bounds of reasonableness. Recognizing, however, that changes in the conditions of transportation are great and rapid, it was provided that such corrected rate should only be enforced and given the effect that it would have had if it had originally been enacted and put in force in its corrected form; for it might well be that, because of such changed conditions, the corrected rate, though a proper one as of the time of its original enactment, would not be a proper one as of the time of its correction. Should any railroad desire to

suspend the operation of a rate fixed by the Commission, pending an appeal thereon, it is required to give bond to pay back all sums which it may collect pending the appeal, in excess of the amount ultimately determined to be proper. All such refundings for which the railroad may thus become liable, are collected by the State on such bond, and distributed to the persons entitled thereto, without cost to them—the necessary accounts therefor being kept, pending the appeal, by the Commission upon daily or weekly reports which the railroad is required to make to it.

The many difficulties resulting from a commission's having to resort to the courts to enforce its orders, could be readily corrected by conferring full judicial powers upon the commission to enforce its own orders. This therefore was done with the new Virginia Commission, which, by a proceeding similar to a rule in chancery, may bring any offending company before it, and, proceeding by due process of law, fine such company such sum as it deems proper, within the limits fixed by law, for disobedience to any of its orders.

From this proceeding, also, as well as from all judicial decisions of the Commission, an appeal lies to the Superme Court of Appeals, for the more ample protection of the railroads from any abuse of power by the Commission. But, in the nature of things, no appeal can lie from the exercise by the Commission of its *legislative* discretion; and in order therefore to prevent abuses in this line, paramount authority is reserved to the General Assembly to legislate on all matters (except fixing rates and the classifications on which they are based), so that it is always in the power of the General Assembly to correct any neglect or abuse of its legislative functions by the Commission.

As to rates and classifications of traffic, it is of course physically impossible for the General Assembly to fix rates specifically and in detail, and so the Commission is given exclusive authority in these matters, subject only to correcton by the Supreme Court of Appeals, in the matter of the reasonableness and validity of the rate or classification prescribed. In the case of rates and classifications of traffic, it is believed that, if they are kept within the bounds of reasonableness, no abuse of mere *legislative* discretion is practically possible.

Realizing that, to properly and efficiently regulate and control

its railroads, requires the exercise by the state of all three of its legislative, judicial and executive functions, and that none of the old machinery for the exercise of any one of these functions is adequate for the demands of this particular service, the Virginia Convention provided, in the State Corporation Commission, a new machine or instrumentality of government, specially designed and constructed to meet the peculiar requirements of the service for which it was intended and to deal with the new conditions which the modern railroad situation presents. This Commission is clothed with all the legislative, judicial and administrative powers necessary for the vigorous and complete execution of its duty to regulate and control the operation of railroads. Within the limits of those matters which pertain to such regulation and control, this Commission is a miniature government, complete within itself, and is not obliged to call, or depend, upon any other department or instrumentality of government for aid in the performance of its duty to regulate and control the railroads. At once, it is an administrative body, to constantly supervise and inspect the working of the railroads, to bring to light abuses, to study the subject of transportation, the needs of the public and the efficiency of the service; it is a full-fledged legislature, for the enactment of all permissible rules, regulations and requirements for railroad companies; and it is a completely equipped court, to pass conclusively upon the validity of those rules, etc., at the time of their enactment, and to inforce obedience to them after their enactment. But while this Commisson is not dependent upon any other branch of the government for assistance in the performance of its duties, yet an ample and salutary supervisory power and control over said Commisson, in order to prevent abuses by it, is reserved to the general government through the Supreme Court of Appeals and the general legislature.

Should it be objected that the amplitude of those powers would render the Commission very dangerous should the personnel of the Commission prove incompetent or corrupt, the reply is, that this would be true of every instrumentality of government; for no more terrible engine of oppression could be conceived of in any state having even the outward forms of a free government, than a court of final resort whose judge was either incompetent or corrupt. The railroad interests are in less danger from this Corpora-

tion Commission, than from any court in the land, not only because the Commission is more familiar with the technique of railroad matters than any judge could be, but because every single judicial act of this Commission (regardless of the amount involved) is appealable to the Court of Appeals—which is not true of proceedings in any other court in the state. The public is in no additional danger from this Commission, because, as matters formerly stood, all of the legislative discretion vested in this Commission (except that vested in the General Assembly, which latter has not been interfered with), was exercised by the railroad managers themselves, and it is confidently submitted that, in measuring the extent of their duty to the public and in deciding controversies between themselves and the public, no judge or tribunal more unfavorable to the public could by possibility be selected, than the railroads themselves.

Thus it will be seen that, while this new Commission has been clothed with legislative, judicial and executive powers, and made capable of the promptest and most vigorous execution of them all, to the end that state regulation and control of railroads may be actual, effective and complete; yet, at the same time, every possible safeguard has been provided against the abuse of those extraordinary powers, so that no class of property in the state has more protection and security than railroad property, and, in no state, are the public, and particularly the shippers, more fully and effectually protected against railroad abuses and oppression than in Virginia.

It remains now to be determined, by actual experiment, whether the people, without injustice to any private rights, or detriment to the public welfare, can be adequately protected from railroad abuses, by Government Regulation and Control, or whether, as some contend, the only effective remedy for those great evils in the matter of transportation, which we all recognize, is Government Ownership of railroads—a remedy which many of us fear would be worse than the disease.

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May 2, 1904.